

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

**JIMMIE VICTORY and
HELEN VICTORY,**

Plaintiffs-Appellants,

Vs.

CITY OF MURFREESBORO,

Defendant-Appellee.

From The Rutherford County Circuit
Court, No. 33346
The Honorable Don R. Ash, Judge
C.A. No. 01A01-9607-CV-00322

AFFIRMED

Guy R. Dotson, Jr., of Murfreesboro
For Appellants

Thomas L. Reed, Jr. and Jerry E.
Farmer of Murfreesboro, For Appellee

FILED

January 31, 1997

Cecil W. Crowson
Appellate Court Clerk

MEMORANDUM OPINION¹

CRAWFORD, J.

Plaintiffs, Jimmie and Helen Victory, appeal from the judgment of the trial court dismissing their case against the defendant, City of Murfreesboro. The Victories were injured in Murfreesboro when their car was struck in the rear by a vehicle driven by Ronnie Hickman who was being chased by a Murfreesboro policeman.²

On the night of May 8, 1993, a fire occurred at a gas station on Broad Street in Murfreesboro. Broad Street is a seven-lane main artery of Murfreesboro running through a commercial area. Because of the fire, the police blocked the northbound lanes of Broad Street, and fire engines and fire hoses blocked most of the southbound lanes. Officer Terry Spence, a Murfreesboro policeman, and another officer were directing and rerouting northbound traffic to protect the public and to prevent cars from driving over the fire hoses.

After the fire was mostly contained, a vehicle approached Officer Spence and the driver stated that he left the gas station earlier in fear and needed to return to pay for his gas. Officer

¹Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

² Ronnie Hickman, the fleeing driver, was also a defendant in the case. The trial court entered a default judgment against Hickman when he failed to answer the complaint. Hickman is not a party to this appeal.

Spence let him through the road block and allowed him to proceed to the gas station. A pickup truck, driven by Hickman, then approached Officer Spence. Officer Spence stopped the car, and Hickman stated, in reference to the first car, "I'm with her." Officer Spence suspected that Hickman was intoxicated because of his personal appearance and because of the odor of alcohol. After Hickman repeated the statement, "I'm with her," Officer Spence informed him that the first driver was male. Hickman replied, "Well, I'm with him." After further observation, Officer Spence decided to conduct a field sobriety test. Hickman failed so Officer Spence placed him under arrest. Officer Spence did not handcuff Hickman because he had been cooperating. Hickman requested to return to his car to get his driver's license which was sitting on the front seat, and Officer Spence assented. However, instead of retrieving the license, Hickman jumped into the vehicle and quickly left the scene. Officer Spence ran to his patrol car and began to pursue Hickman. They weaved through traffic down Broad Street with speeds ranging from 50 to possibly 80 miles per hour. When Hickman was traveling at approximately 40 to 50 miles per hour, he rear-ended the car driven by the Victorys. The chase covered approximately one-half of a mile from the original stop to the wreck with the Victorys.. After the collision, Hickman continued about an eighth to a quarter of a mile more, and then he surrendered. The entire chase from start to finish occurred in less than 5 minutes.

The Victorys filed a complaint against the City of Murfreesboro and Ronnie Hickman on May 6, 1994. The Victorys allege that the City was negligent because the City's police officers pursued Hickman at a high rate of speed on a main thoroughfare at night when they knew Hickman's ability to drive was impaired. The Victorys also allege that the City was negligent because its police officers allowed a DUI suspect the opportunity to flee and failed to maintain control of a suspect in their custody. The City denied all material allegations of the complaint and asserted various affirmative defenses.

After a bifurcated bench trial, the trial judge found that Officer Spence acted as a reasonably prudent officer under the circumstances, and that his actions were not a substantial factor in bringing about the harm. Therefore, the trial judge dismissed the case against the City. The Victorys appeal this dismissal and present the following issue: whether the trial court erred in its finding that the City of Murfreesboro was not negligent in pursuing Ronnie Lee Hickman

when Hickman was driving under the influence, at a high rate of speed through downtown Murfreesboro at a time when traffic was present.

Since this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d).

A negligence suit against a municipality is governed by the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 (1980), *et seq.* T.C.A. § 29-20-202 (1980) provides as follows:

29-20-202. Removal of immunity for injury from negligent operation of motor vehicles -- Exceptions. -- (a) Immunity from suit of all governmental entities is removed for injuries resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of his employment.

(b) This section shall not act as a repeal of §§ 55-8-101, 55-8-108, or 55-8-132, and the immunities provided in these sections are hereby expressly continued.

T.C.A. § 55-8-108 (1993) governs the privileges and conditions of the operation of an emergency vehicle. T.C.A. § 55-8-108(e) provides in pertinent part:

The fact that law enforcement personnel pursue an actual or suspected violator of a law or ordinance who flees from such pursuit shall not render the law enforcement personnel, or the employers of such personnel, liable for injuries to a third party proximately caused by the fleeing party unless the conduct of the law enforcement personnel was negligent and such negligence was a proximate cause of the injuries to the third party.

In 1994, the Tennessee Supreme Court changed the law concerning the liability of law enforcement personnel for injuries resulting from accidents during pursuit of a fleeing violator. In *Haynes v. Hamilton County*, 883 S.W.2d 606 (Tenn. 1994), the Supreme Court held that where negligent police conduct exists in initiating or continuing a high speed chase, it is possible for that negligent conduct to be the proximate cause of injuries to innocent third parties. *Id.* at 608.

In *Haynes*, the Court outlined various factors for consideration in determining if the police officer was negligent:

In determining whether the decision to initiate or continue pursuit

is reasonable, the risk of injury to innocent third parties should be weighed against the interest in apprehending suspects. Factors relevant to that determination include the speed and area of pursuit, weather and road conditions, the presence or absence of pedestrians and other traffic, alternative methods of apprehension, applicable police regulations, and the danger posed to the public by the suspect being pursued.

Id. at 611. The Court further stated, “Nonetheless, the factors listed above are not exclusive, and overall, a police officer’s conduct should be viewed in light of how a reasonably prudent police officer would respond under the circumstances, and not judged with the perfect vision afforded by hindsight.” *Id.* In holding that the actions of a police officer can be the proximate cause of a third party’s injuries, the Court said: “General principles of proximate and superseding intervening causation previously adopted in Tennessee are to be applied when determining whether police conduct is a proximate cause of an accident between a fleeing suspect and an innocent third party. *Id.* at 613.

In this case, the trial court examined each of the factors listed by the Supreme Court in *Haynes*, and concluded that the actions of Officer Spence were reasonable under the circumstances. The trial court then specifically found that Officer Spence’s actions were not a substantial factor in bringing about the harm that was complained of, and therefore, were not a proximate cause of the injuries.

We agree with the trial court. While there is always a risk of injury to innocent third parties during pursuit of a fleeing suspect, the interest of removing a drunk driver from the public streets should be very high. Drunk drivers pose great risks to society and cause many of the traffic injuries and fatalities in this state.

In this case, an analysis of the factors listed in *Haynes* indicates that the decision by Officer Spence to pursue Hickman was reasonable. First, while the speeds reached 70 to 80 miles per hour, the chase was less than one mile long, and the pursuit was over in less than 5 minutes. This pursuit was of a brief duration and covered only a small distance. In addition, the street was 7 lanes wide allowing both drivers a wide latitude for error. The surface of the road was wet, but the road was well lit. There was no testimony that road or weather conditions played a part in this accident. The pursuit took place on a Saturday night so there was a steady amount of traffic on the road. There was no testimony indicating the presence of pedestrians.

Officer Spence testified that he did not know the make or model of the vehicle driven by Hickman, but that he had seen his driver's license and knew his name. For a drunk driving conviction, an immediate arrest is essential because the evidence of alcohol dissipates. In addition, it is imperative to remove the drunk driver from the road for the safety of the public. A decision to allow Hickman to continue and to arrest him later would not have been reasonable under the circumstances. Officer Spence also testified that he was in contact with his supervisor as is required by City police department guidelines for officers in a high-speed pursuit. There was no evidence that Officer Spence did not follow the police regulations, nor that the regulations were faulty. To the contrary, although the regulations were adopted before the Supreme Court's decision in *Haynes*, they required City officers to check the various factors the Supreme Court eventually adopted before initiating or continuing a high-speed pursuit.

The trial court found that Officer Spence acted as a reasonably prudent police officer under the circumstances and was not negligent. The trial court further found that Officer Spence's conduct was not the proximate cause of the accident. The evidence does not preponderate against these findings.

Accordingly, the judgment of the trial court is affirmed, and costs of the appeal are assessed against appellants.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

DAVID R. FARMER, JUDGE

HOLLY KIRBY LILLARD, JUDGE